HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.932 of 2006

Between

M.Prasada Rao and others ..Appellants

AND

The District Collector, Krishna district and another ..Respondents

:: JUDGMENT ::

Counsel for the appellants :	Sri K.K.Waghray
Counsel for respondents	Government Pleader for Land Acquisition

11.12.2006

Per G.S.Singhvi, CJ

This is an appeal for setting aside order dated 09.06.2006 passed by the learned Single Judge in W.P.M.P.No.8940 of 2006, whereby he rejected the appellants' prayer for restoration of Writ Petition No.18818 of 1994, which was dismissed in default on 29.3.2006.

We have heard Sri K.K.Waghray, learned counsel for the appellants, learned Government Pleader for Land Acquisition and gone through the records. We have also perused affidavit dated 28.11.2006 filed by Sri K.K.Waghray, Advocate.

It is borne out from the record that the writ petition filed by the appellants questioning the legality of notification dated 26.5.1994 was dismissed by the learned Single Judge in default because no one appeared on behalf of the appellants. The restoration application filed on behalf of the appellants was dismissed by the learned Single Judge by observing that order dated 29.3.2006 was itself self-explanatory.

In paragraph 2 of his affidavit, Sri K.K.Waghray, Advocate has made the following statement:

> " It is submitted that on 28.07.2005 I represented and argued in WPMP.No.17385 of 2005 and WPMP No.17386 of 2006 and those applications were allowed by the Hon'ble Court. Thereafter the matter was posted on 4.8.2005, 25.8.2005, 16.12.2005 and 23.1.2006. However, when the case was listed before the learned Single Judge on the above dates,

the representations could not be made under a bona fide mistake and by inadvertence. The non-representation by me on the above four dates was neither intentional nor deliberate but under a bona fide mistake and by inadvertence. I sincerely apologize for non-representation on the above four dates i.e. 4.8.2005, 25.8.2005, 16.12.2005 and 23.1.2006."

A reading of the above re-produced extract of the affidavit of the learned counsel clearly shows that he was entirely responsible for dismissal of the writ petition in default. We are sure if the learned counsel had filed similar affidavit along with W.P.M.P.No.8940 of 2006, the learned Single Judge, would have, in all probability, restored the writ petition and the appellants may not have suffered the burden of expenses which they must have incurred in filing the appeal.

Be that as it may, keeping in view the well-accepted principle of law that party should not suffer due to mistake or negligence of the advocate, we allow the appeal and set aside order dated 09.06.2006 passed by the learned Single Judge in W.P.M.P.No.8940 of 2006. As a sequel to this, order dated 29.03.2006 is also set aside and Writ Petition No.18818 of 1994 is restored to its original number. The same may now be listed for hearing before an appropriate Bench on 26.12.2006.

W.A.M.P.No.1959 of 2006 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

11.12.2006
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